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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ DEPUTY

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

No. 23-00052-PHX-DJH

PLEA AGREEMENT

16 Plaintiff, United States of America, and the defendant, Merle Brendon Martin,
17 hereby agree to resolve this matter on the following terms and conditions:

1. PLEA

19 The defendant will plead guilty to Counts 1, 3 and 5 of the indictment, each Count
20 charging the defendant with a violation of Title 18, United States Code (U.S.C.) §§ 1153
21 and 113(a)(3), CIR-Assault with a Dangerous Weapon, a Class C felony offense.

2. MAXIMUM PENALTIES

23 a. A violation of 18 U.S.C. § 113(a)(3) is punishable by a maximum fine of
24 \$250,000, a maximum term of imprisonment of 10 years, or both, and a term of supervised
25 release of 3 years. A maximum term of probation is five years (including a minimum term
26 of one year if probation is imposed).

27 b. According to the Sentencing Guidelines issued pursuant to the Sentencing
28 Reform Act of 1984, the Court shall order the defendant to:

(1) make restitution to any victim of the offense pursuant to 18 U.S.C. § 3663 and/or 3663A, unless the Court determines that restitution would not be appropriate;

(2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a fine is not appropriate;

(3) serve a term of supervised release when required by statute or when a sentence of imprisonment of more than one year is imposed (with the understanding that the Court may impose a term of supervised release in all other cases); and

(4) pay upon conviction a \$100 special assessment for each count to which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

c. The Court is required to consider the Sentencing Guidelines in determining the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court is free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crime(s) of conviction, unless there are stipulations to the contrary that the Court accepts.

3. AGREEMENTS REGARDING SENTENCING

a. Stipulation. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and defendant stipulate that defendant's sentence of imprisonment shall not exceed ninety-six (96) months. This stipulated sentencing cap will not change based on departures considered under U.S.S.G. § 1B1.1(b). Nothing in this agreement shall preclude defendant from moving for a downward departure, variance, or sentence below the cap, or the court from imposing a sentence below the cap.

b. Stipulation. Pursuant to U.S.S.G. § 5G1.3(b) and § 5K2.23, the United States and the defendant stipulate that the defendant shall receive an adjustment to his sentence for any period of imprisonment already served on any sentence imposed by the San Carlos Apache Tribal Court in a case based on the same facts as here.

c. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant specifically agrees to pay full restitution, regardless of the resulting loss amount but in no

1 event more than \$500,000, to all victims directly or proximately harmed by the defendant's
2 "relevant conduct," including conduct pertaining to any dismissed counts or uncharged
3 conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes
4 an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A. The defendant understands that
5 such restitution will be included in the Court's Order of Judgment and that an unanticipated
6 restitution amount will not serve as grounds to withdraw the defendant's guilty plea or to
7 withdraw from this plea agreement.

8 d. Assets and Financial Responsibility. The defendant shall make a full
9 accounting of all assets in which the defendant has any legal or equitable interest. The
10 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
11 transfer any such assets or property before sentencing, without the prior approval of the
12 United States (provided, however, that no prior approval will be required for routine, day-
13 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
14 Office to immediately obtain a credit report as to the defendant in order to evaluate the
15 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
16 also shall make full disclosure of all current and projected assets to the U.S. Probation
17 Office immediately and prior to the termination of the defendant's supervised release or
18 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
19 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
20 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
21 under this agreement and the law.

22 If the defendant is a member of a Native American tribe that provides "per capita"
23 payments to its members, the defendant agrees that any such "per capita" payment shall be
24 paid over to the Clerk of the Court and applied to the defendant's restitution obligation
25 until restitution to all victims is paid in full.

26 e. Acceptance of Responsibility. If the defendant makes full and complete
27 disclosure to the U.S. Probation Office of the circumstances surrounding the defendant's
28 commission of the offense, and if the defendant demonstrates an acceptance of

1 responsibility for this offense up to and including the time of sentencing, the United States
2 will recommend a two-level reduction in the applicable Sentencing Guidelines offense
3 level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16 or more,
4 the United States will move the Court for an additional one-level reduction in the applicable
5 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

6 f. Non-Binding Recommendations. The defendant understands that
7 recommendations are not binding on the Court. The defendant further understands that the
8 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
9 recommendation.

10 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

11 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
12 sentencing, shall dismiss the following charges: 2, 4, 6, 7 and 8.

13 b. This office shall not prosecute the defendant for any further offenses
14 committed by the defendant, and known by the United States, in connection with the
15 investigation reflected Bureau of Indian Affairs Case # BO22319455 and occurring on or
16 about September 4, 2022.

17 c. This agreement does not, in any manner, restrict the actions of the United
18 States in any other district or bind any other United States Attorney's Office.

19 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

20 a. If the Court, after reviewing this plea agreement, concludes that any
21 provision contained herein is inappropriate, it may reject the plea agreement and give the
22 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
23 11(c)(5).

24 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
25 vacated, or reversed at any time, this agreement shall be null and void, the United States
26 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
27 any charges that have been dismissed because of this plea agreement shall automatically
28 be reinstated. In such event, the defendant waives any and all objections, motions, and

1 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
2 restrictions in bringing later charges or proceedings. The defendant understands that any
3 statements made at the time of the defendant's change of plea or sentencing may be used
4 against the defendant in any subsequent hearing, trial, or proceeding subject to the
5 limitations of Fed. R. Evid. 410.

6. **WAIVER OF DEFENSES AND APPEAL RIGHTS**

7 The defendant waives (1) any and all motions, defenses, probable cause
8 determinations, and objections that the defendant could assert to the indictment or
9 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
10 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
11 judgment against the defendant, or any aspect of the defendant's sentence, including the
12 manner in which the sentence is determined, including but not limited to any appeals under
13 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
14 (habeas petitions), and any right to file a motion for modification of sentence, including
15 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
16 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall
17 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
18 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.
19 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
20 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section
21 II.B of Ariz. Ethics Op. 15-01 (2015)).

22. **DISCLOSURE OF INFORMATION**

23 a. The United States retains the unrestricted right to provide information and
24 make any and all statements it deems appropriate to the U.S. Probation Office and to the
25 Court in connection with the case.

26 b. Any information, statements, documents, and evidence that the defendant
27 provides to the United States pursuant to this agreement may be used against the defendant
28 at any time.

1 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
2 cooperation shall include providing complete and truthful responses to questions posed by
3 the U.S. Probation Office including, but not limited to, questions relating to:

4 (1) criminal convictions, history of drug abuse, and mental illness; and
5 (2) financial information, including present financial assets or liabilities
6 that relate to the ability of the defendant to pay a fine or restitution.

7 8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS

8 a. Nothing in this agreement shall be construed to protect the defendant from
9 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
10 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
11 monetary penalties, including restitution imposed by the Court, shall be due immediately
12 upon judgment, shall be subject to immediate enforcement by the United States, and shall
13 be submitted to the Treasury Offset Program so that any federal payment or transfer of
14 returned property the defendant receives may be offset and applied to federal debts (which
15 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
16 payments, the schedule of payments shall be merely a schedule of minimum payments and
17 shall not be a limitation on the methods available to the United States to enforce the
18 judgment.

19 b. The defendant agrees to forfeit, and hereby forfeits, all interest in any asset
20 that the defendant owns or over which the defendant exercises control, directly or
21 indirectly, as well as any property that is traceable to, derived from, fungible with, or a
22 substitute for property that constitutes the proceeds of the offense(s), or which was used to
23 facilitate the commission of the offense(s), including the following property:

24 One (1) Black Diamondback AR-15 style rifle, Serial #DB2474886;

25 | Twelve (12) .300 blackout bullets in a 30-round magazine.

26 The defendant further agrees to waive all interest in any such asset in any
27 administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal.
28 The defendant agrees to consent to the entry of orders of forfeiture for such property and

1 waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding
2 notice of the forfeiture in the charging instrument, announcement of the forfeiture at
3 sentencing, and incorporation of the forfeiture in the judgment. The defendant further
4 understands and agrees that forfeiture of the asset is appropriate and in accordance with the
5 applicable forfeiture statutes, which may include Title 8 U.S.C. § 1324(b), Title 18 U.S.C.
6 §§ 924(d), 981, 982 and 2253, Title 21 U.S.C. §§ 853 and 881, and Title 28 U.S.C. §
7 2461(c).

8 c. Forfeiture of the defendant's assets shall not be treated as satisfaction of any
9 fine, restitution, cost of imprisonment, or any other penalty this court may impose upon the
10 defendant in addition to forfeiture. This agreement does not preclude the United States
11 from instituting any civil or administrative forfeiture proceedings as may be appropriate
12 now or in the future.

13 d. The defendant agrees to waive all constitutional and statutory challenges in
14 any manner (including direct appeal, habeas corpus, double jeopardy or any other means)
15 to any forfeiture imposed as a result of this guilty plea or any pending or completed
16 administrative or civil forfeiture actions, including that the forfeiture constitutes an
17 excessive fine or punishment. The defendant agrees to take all steps as requested by the
18 United States to pass clear title to forfeitable assets to the United States, and to testify
19 truthfully in any judicial forfeiture proceeding. The defendant acknowledges that all
20 property covered by this agreement is subject to forfeiture as proceeds of illegal conduct,
21 property facilitating illegal conduct, and substitute assets for property otherwise subject to
22 forfeiture, and that no other person or entity has a legitimate claim to these items listed.

23 e. The defendant agrees not to file a claim to any of the listed property in any
24 civil proceeding, administrative or judicial, which may be initiated. The defendant further
25 agrees that he/she will not contest civil, administrative or judicial forfeiture of the listed
26 property. The defendant agrees to waive his right to notice of any forfeiture proceeding
27 involving this property, and agrees not to file a claim or assist others in filing a claim in
28 that forfeiture proceeding.

f. The government reserves its right to proceed against any remaining assets not identified either in this agreement or in any civil actions which are being resolved along with this plea of guilty, including any property in which the defendant has any interest or control, if said assets, real or personal, tangible or intangible were involved in the offense(s).

The defendant hereby waives and agrees to hold the government and its agents and employees harmless from any and all claims whatsoever in connection with the seizure, forfeiture, and disposal of the property described above. Without limitation, the defendant understands and agrees that by virtue of this plea of guilty, the defendant will waive any rights or cause of action that the defendant might otherwise have had to claim that he/she is a "substantially prevailing party" for the purpose of recovery of attorney fees and other litigation costs in any related civil forfeiture proceeding pursuant to 28 U.S.C. § 2465(b)(1).

9. ELEMENTS

CIR-Assault with a Dangerous Weapon

On or about September 4, 2022, in the District of Arizona:

1. Defendant assaulted the victim named in the indictment by intentionally striking or wounding the victim or using a display of force that reasonably caused the victim to fear immediate bodily harm;
2. Defendant acted with the intent to do bodily harm;
3. Defendant used a dangerous weapon;
4. The assault took place on the San Carlos Apache Indian Reservation, a federally recognized reservation; and
5. Defendant was an Indian at the time of the crime. Specifically, the defendant had some quantum of Indian blood, whether or not that blood is traceable to a member of a federally recognized tribe, and the defendant was a member of or affiliated with a federally recognized tribe.

1 **10. FACTUAL BASIS**

2 a. The defendant admits that the following facts are true and that if this matter
3 were to proceed to trial the United States could prove the following facts beyond a
4 reasonable doubt:

5 b. On September 4, 2022, Defendant arrived at the residence of U.B., the victim
6 in Count 1 of the Indictment. The residence was located on the San Carlos Apache
7 Reservation, a federally recognized Reservation, in the District of Arizona. Defendant was
8 carrying a Black Diamondback AR-15 style rifle, Serial #DB2474886. The rifle contained
9 .300 caliber blackout bullets in a 30-round magazine. Defendant, during an argument with
10 victim U.B., and with intent to do bodily harm, pointed the rifle at U.B. and fired the rifle
11 three times. Each of the three bullets missed U.B. Two of the bullets, however, struck L.N
12 and M.C., victims in Counts 3 and 5 of the Indictment, respectively, who were present and
13 socializing at U.B.'s residence. L.N. sustained a resulting serious bodily injury.

14 Defendant was an Indian at the time of the crime. Specifically, the defendant had
15 some quantum of Indian blood traceable to a member of the San Carlos Apache Indian
16 Tribe (SCAIT), a federally recognized tribe, and the defendant was a member of and
17 affiliated with the SCAIT.

18 c. The defendant shall swear under oath to the accuracy of this statement and,
19 if the defendant should be called upon to testify about this matter in the future, any
20 intentional material inconsistencies in the defendant's testimony may subject the defendant
21 to additional penalties for perjury or false swearing, which may be enforced by the United
22 States under this agreement.

23 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

24 I have read the entire plea agreement with the assistance of my attorney. I
25 understand each of its provisions and I voluntarily agree to it.

26 I have discussed the case and my constitutional and other rights with my attorney.
27 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
28 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to

1 present evidence in my defense, to remain silent and refuse to be a witness against myself
2 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
3 to be presumed innocent until proven guilty beyond a reasonable doubt.

4 I agree to enter my guilty plea as indicated above on the terms and conditions set
5 forth in this agreement.

6 I have been advised by my attorney of the nature of the charges to which I am
7 entering my guilty plea. I have further been advised by my attorney of the nature and range
8 of the possible sentence and that my ultimate sentence shall be determined by the Court
9 after consideration of the advisory Sentencing Guidelines.

10 My guilty plea is not the result of force, threats, assurances, or promises, other than
11 the promises contained in this agreement. I voluntarily agree to the provisions of this
12 agreement and I agree to be bound according to its provisions.

13 I understand that if I am granted probation or placed on supervised release by the
14 Court, the terms and conditions of such probation/supervised release are subject to
15 modification at any time. I further understand that if I violate any of the conditions of my
16 probation/supervised release, my probation/supervised release may be revoked and upon
17 such revocation, notwithstanding any other provision of this agreement, I may be required
18 to serve a term of imprisonment or my sentence otherwise may be altered.

19 This written plea agreement, and any written addenda filed as attachments to this
20 plea agreement, contain all the terms and conditions of the plea. Any additional
21 agreements, if any such agreements exist, shall be recorded in a separate document and
22 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
23 be in the public record.

24 I further agree that promises, including any predictions as to the Sentencing
25 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
26 (including my attorney) that are not contained within this written plea agreement, are null
27 and void and have no force and effect.

28 I am satisfied that my defense attorney has represented me in a competent manner.

1 I fully understand the terms and conditions of this plea agreement. I am not now
2 using or under the influence of any drug, medication, liquor, or other intoxicant or
3 depressant that would impair my ability to fully understand the terms and conditions of this
4 plea agreement.

5

6

7

7-21-23

8 Date



MERLE BRENDON MARTIN
Defendant

9

10 **APPROVAL OF DEFENSE COUNSEL**

11 I have discussed this case and the plea agreement with my client in detail and have
12 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
13 constitutional and other rights of an accused, the factual basis for and the nature of the
14 offense to which the guilty plea will be entered, possible defenses, and the consequences
15 of the guilty plea including the maximum statutory sentence possible. I have further
16 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
17 assurances, promises, or representations have been given to me or to the defendant by the
18 United States or any of its representatives that are not contained in this written agreement.
19 I concur in the entry of the plea as indicated above and that the terms and conditions set
20 forth in this agreement are in the best interests of my client. I agree to make a bona fide
21 effort to ensure that the guilty plea is entered in accordance with all the requirements of
22 Fed. R. Crim. P. 11.

23

24

7/21/23

25 Date



MYLES SCHNEIDER
Attorney for Defendant

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APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

GARY M. RESTAINO
United States Attorney
District of Arizona

Date

THOMAS SIMON
Assistant U.S. Attorney

ACCEPTANCE BY THE COURT

Date

Honorable DIANE J. HUMETEWA
United States District Judge